

THE AMERICAN LAW REGISTER AND REVIEW.

VOL. { 45 O. S. }
 { 36 N. S. }

AUGUST, 1897.

No. 8.

JURISDICTION OF THE JUSTICE OF THE PEACE, AND THE POSSIBLE APPLICATION IN PENN- SYLVANIA OF THE SMALL DEBTORS' COURT ON THE ENGLISH PLAN.*

That the present system of administering justice in small cases through the medium of the Justice of the Peace is a misshapen and perverted thing, contributing nothing to any substantial results in the proper determination of controversies, will probably be generally conceded. How the system originated, and how it came to its present stage of perfect inefficiency, would make an interesting chapter for the legal antiquary. It is a chapter, however, apart from our present task, which is a practical rather than historical treatment of the subject.

It may be remarked in passing that the civil jurisdiction of the Justice of the Peace in Pennsylvania is very old. The first Act conferring upon him such jurisdiction, to the extent of forty shillings, was passed in 1715, since which time it has been successively increased and extended to its present proportions.

It is probable that no such results as are practically worked out were ever intended or foreseen by the framers of the

* Delivered to the Pennsylvania Bar Association, June 30, 1897, by Thomas Patterson, Esq., of the Pittsburg Bar.

legislative plan under which these courts operate, nor is its decadent condition due to any marked or organic turpitude on the part of the average Justice. Its present status is the direct result of the law, much more potent than any upon the statute books, that a man will seek and get gain where he may do so free from risks of punishment, without embarrassment from refined ethical considerations. The average man who fills the position of Justice of the Peace has his *clientele*, and like you and myself is anxious that it should increase and multiply. Like us, he is desirous that business shall be brought to his shop, and that he may be well and favorably known in the quarters whence such business originates. If he does an injustice, are not the courts of Common Pleas open for redress, and may not the defeated litigant have his appeal upon payment of costs? If there be those whose moral natures have evolved to a higher plane than this, who would do justice though the heavens fall, and, if need be, decide against their best clients without regard to financial consequences, such are not apt to make a fatiguing canvass for the office, with the mere purpose of demonstrating their moral fitness for an unremunerative position.

In its practical workings, then, we have a system under which the judge is the adviser and counsellor of those who bring business to his doors, and whose judgments are given, not in the interests of justice, but to hold the confidence and custom of his employers. So far as the substantial results are concerned, the substitution of a slot machine which would allow the depositor of a small sum to draw a blank judgment for a limited amount, subject to appeal within twenty days, would be economical both in time and money.

The evils arising from this system, however, are much more serious than the mere question of costs. The administration of justice is, after all, a matter of delicate adjustment. It depends much on public confidence and public respect. No department of it can be prostituted without resultant damage to the whole. The ordinary citizen, unacquainted with the ways of litigation, who sees right disregarded and wrong prevail in this lower tribunal, has some reason to conclude that,

if there be a better order of things in the higher courts, it is a mere matter of chance and through no merit on the part of the law or of the law-makers.

As, also, a large percentage of the cases in which the defendant is solvent are at once appealed, we have as a further and perhaps the most serious result of this system the trial lists of the Common Pleas congested with a mass of trifling litigation; cases ordinarily involving no important questions of law, which could as well be disposed of by any impartial tribunal, and in which the public treasury could better afford to pay the plaintiff his claim than to hear his dispute.

Without going into extended statistics, a few figures taken from the records of Allegheny County, which happen to be most convenient to the writer, may be of some interest. Taking the January Term of Common Pleas No. 2, the February Term of Common Pleas No. 3, and the March Term of Common Pleas No. 1, for 1897, we find an aggregate of cases on their dockets of two thousand five hundred and fifty. Of these, six hundred and seventy-eight were appealed cases, showing costs paid on the Justice's record in the aggregate, \$2960.13. If these figures are a fair proportion of the business of the year, we may assume that about one-fourth of the cases tried by these Common Pleas Courts are appealed cases, and that the costs paid to Justices for these cases, which must be retried, amount to nearly \$12,000 per annum, a sum which, added to the subsequent record costs in the same cases, would seem quite sufficient to support a system of competent lower courts for the final adjudication of such disputes.

Having, then, glanced thus briefly at our own methods for reaching a determination of this class of cases, let us turn by way of comparison to the English Small Debt System. These courts, which are called the New County Courts, by way of distinction from the old County Courts of the Common Law, with which the student of Blackstone is familiar, were created by Act of 9 & 10 Vic. c. 95, entitled "An Act for the more easy recovery of small debts and demands in England." This act is very long and evidently prepared with the utmost

care. It provides a system of Small Debt Courts, worked out in the most minute detail. Roughly outlined, its provisions are as follows :

The privy council is authorized to divide any county or part of a county, city, borough or town into districts and to declare by what names and in what towns and places the county court shall be held in each district. The courts already existing under special acts for the recovery of small debts, are authorized to be merged in these county courts. The Lord Chancellor is authorized to appoint as many fit persons as may be necessary to be judges of these courts, and he also has authority to remove them for inability or misbehavior. The judge must be either a barrister or special pleader, who has practiced for seven years; except that in the first institution of the courts those attorneys who had already been sitting in the special courts might be reappointed and continue to act as judges in the new county courts. The judge of the county court, with the approval of the Lord Chancellor, is given authority to appoint a clerk for his court and a high bailiff, who in turn appoints his assistants, and serves process, attends the meetings of the court, and in general performs the duties of the sheriff in the higher courts. The judge is required to attend and hold county court, at the several places appointed, at least once each calendar month, or at such other times as one of the Chief Secretaries shall order. Jurisdiction is given of debts, demands and damages to not more than twenty pounds, but actions of ejectment, or actions in which any corporeal or incorporeal hereditament, toll, market or franchise is brought into question, are excluded, as are also constructions of wills, settlements, and actions for malicious prosecution, for libel, slander and seduction, and for breach of promise of marriage.

Any person desiring to bring a suit cognizable in these courts states the nature of his case to the clerk, who enters it in a book kept for the purpose. It is called a plaint, and states the names and last places of abode of the parties, and these are numbered consecutively throughout the year. Thereupon a summons stating the substance of the action and bearing the number of the plaint, under the seal of the court, is to

be served upon the defendant or at his dwelling house, the number of days prior to the term of court fixed to hear the case which shall be determined by general order. If the defendant has any special defense in the nature of a set-off or counter-claim, statute of limitation, or matter of that general nature, he is required to set it up in a defense. Otherwise he may appear at the time fixed, and the case is heard. Under the original act the parties might appear by counsel, but counsel were not allowed to address the court. If either party desires a jury trial, he is required to give notice to the clerk, whose duty it is then to communicate this fact to the other party, either by personal notice or by mailing him a letter; proof of actual service is not required. The party requesting the jury trial is also required to pay a jury fee of five shillings. A number of jurymen, in the opinion of the court sufficient, is made up from the list of the persons of the district qualified to act as *nisi prius* jurors, who are required to be in attendance at the next sitting of the court. The jurors in attendance are all sworn at the beginning of court and not separately in each case. A jury of five is impaneled, the rules as to challenges being the same as in the superior courts.

If the plaintiff does not appear, judgment of nonsuit can be given by the court and the costs of the defendant assessed against him. If the defendant does not appear, the plaintiff and his witnesses are heard and judgment given. The judge is authorized to make the judgment payable in installments at certain times, as the circumstances of the defendant may seem to him to warrant. No execution can issue on such a judgment until after default made in the installments. A case could only be removed to the superior court where it involved more than five pounds, and then only upon allowance by a superior judge. Any action brought in the superior courts for a case cognizable in the lower courts is denied costs, unless the trial judge certifies that the action was rightly brought in such court.

By the Act of 13 & 14 Vic. c. 61, jurisdiction is extended to the recovery of any debt, damage or demand, not

exceeding fifty pounds, and to such amount beyond this limitation as the parties may agree in writing so to try. The provisions of the former act prohibiting counsel from addressing the court is repealed, and the party to the suit, his general attorney, or his barrister specially retained, or any other person by leave of the court, may address the court subject to its general rules.

By this act, also, the salaries of the judges are fixed at not more than £1500 nor less than £1200 per annum, that of the clerk at £700.

An appeal is allowed to the superior courts on questions of law if the case involves more than twenty pounds; but the decision of the county court in matters of fact is conclusive.

The Act of 28 & 29 Vic. c. 99 gives equity jurisdiction on certain subjects, such as the foreclosure of mortgages, specific performance, proceedings under the trustee relief acts, and dissolution of partnership, where the amount in controversy does not exceed five hundred pounds.

It hardly needs discussion to show that the method adopted by our English brethren is a simple, practicable, working method of adjudicating small cases, so that the parties may at least feel that they have had a fair and impartial hearing. I do not mean to claim that the method as worked out in England is perfect. I believe there is some criticism there as to the heavy costs attending actions in the county courts. A recent number of Mr. Labouchere's *Truth* contained a sharp protest on the subject and instanced a case in which an action for some four pounds had been accompanied with more than twelve pounds of costs. This, however, is an evil into which we are not likely to fall, in view of our modest allowances for costs; and no one can read the English journals without realizing that the county courts are regarded as fair tribunals and their decisions commented upon with respect. Certainly our own system cannot stand for a moment in comparison with theirs.

To the suggestion that a plan working along the English lines be adopted here, it will probably be objected that it is impracticable; that a constitutional amendment and legislative

action would be necessary, which would encounter strongly entrenched opposition. Even if these objections be insurmountable, we may at least indulge ourselves the inexpensive pleasure of constructing theoretical reforms, of spreading before ourselves an intellectual feast of Barmecide, where all things we want are ready and we need but to reach out and take.

If then we may assume the *potentia remotissima* of a constitutional amendment, and a legislative committee seeking advice, let us speculate for a moment as to how far such a system could be applied to our conditions. It would seem at first necessary to make a division of the State into districts. There are fifty-eight, I believe, in England. We would probably need fully as many here. These districts could not well coincide with county lines, but would have to be adjusted after computation upon a population basis. To avoid confusion, it could be arranged that each of these districts should belong to and be a part of some one of the judicial districts into which the common pleas jurisdiction is now divided. As I would not suggest an addition to the already over-taxed election system of our State, a judge could be appointed, either by the governor or by the proper Court of Common Pleas to preside over the small debt court. Such judge to be learned in the law, and to have a competent salary, all the fees of business before him being turned over to the State; the judge to be removable by the power appointing him, to follow the words of the English statute, upon "inability or misbehavior."

Before this small debt court all causes of action arising out of contract, express or implied, to an amount not in excess of \$500 could be brought. The adjudication of the judge to be final on questions of fact, but to be subject to revision by writ of error to the Common Pleas Court, of which his district is a part, on questions of law, where the amount in dispute exceeds \$25. Either party to have the right to demand a jury trial before five jurors, upon notice and payment of a small fee as provided in the English system. The judge of each court to appoint his own clerk and constable, to perform the

usual duties of such officers. The pleadings to be most informal,—a mere statement to the clerk of the cause of action, which is then set out in the summons and to which there need be no reply unless the defendant has special matter of defense.

The Court of Common Pleas to have concurrent jurisdiction of these causes of action, but the penalty for bringing an action in the Common Pleas to be the forfeiture of costs. In this way, it is submitted, small cases could be adjudicated without greater expense to the community than is now experienced in the useless litigation before Justices of the Peace. The tribunal would be impartial, and there is no reason why the practical efficiency of the system should not be as satisfactory to the litigants as the present trials in the Common Pleas, and the waste both of time and money to them and to the State by the crowding of the Common Pleas calendar with these small cases would thus be avoided.

A word more, however, as to the practicability of some such change as is here suggested. It is noticeable that most legal reforms come from action of the legal profession. There have been, of course, exceptional laymen, such as Oliver Cromwell, who have contributed greatly to juridical progress. They do not, however, alter the historical fact, that law and legal procedure have been simplified by lawyers, in spite of the popular belief to the contrary. Perhaps this is due to the fact, that to any true workman the dignity and efficiency of his work becomes in itself an aim outside of and apart from his own pecuniary relations to his task. That which has been accomplished shows that it cannot be said that any change is impracticable in favor of which there is a consensus of opinion on the part of those who have made it a special subject of study and thought. The reform here discussed, though limited to an humble sphere, is an important one, at least as important, in the opinion of the writer, as the fixing of a common label to essentially different causes of action, or the disguising of a writ of error under the caption of an appeal.

As our population has increased, drawing its members from all sorts of heterogeneous material, the respect for law

has grown lighter, the hand of the law is less regarded. The spirit of change, of defiance of existing methods, of turbulence and unrest, seems to move upon the heart and mind of the citizen with increasing strength : the spirit—

“That bids him flout the Law he makes,
That bids him make the Law he flouts,
Till, dazed by many doubts, he wakes
The drumming guns, that—have no doubts.”

There is no way in our limited sphere of action, in which we can better aid in the repression of this spirit, in strengthening the side of order, in upholding a true conservatism, than by recommending such action as shall increase the dignity of the courts and the respect with which the administration of justice should be regarded in all its parts. The theory of pure democracy upon which we have builded, that ceremonials are of no weight, that the sayings of the philosopher in his shirt sleeves are as worthy of consideration as those of the man in the gown, has its limitations. There is a subtle something, hard to define, hard to describe, which nevertheless is potent and everywhere recognized, which impresses all men in the due and formal acknowledgment in their presence of a higher power. Such a higher power, whose acts should be surrounded with all the appropriate symbols of respect, is the daily administration of justice. The Court of Common Pleas, relieved of the details of petty controversies marked by no question of merit and occupying time to but little purpose, would rise to its true position and height, as a court for the adjudication of important matters, and for the review, as a court of error, of the records of inferior tribunals. These inferior tribunals, in turn, although dealing in small cases, would be marked with all the *indicia* of the true and equitable determination of controversies, and with all the power and majesty of the law.

Such a system, so worked out, would be not the least powerful influence which would tend both to educate the citizen to a due respect for the power and value of the law, and also to give to the minister of the law a true conception of the worthiness of his office.

In conclusion, then, I would submit, that our present system is bad, in that it places judicial power in the hands of men whose pecuniary interest is served by increasing the amount of litigation before them, and who constantly decide all cases in favor of those who employ them ; that the substitution of some plan by which small cases would be fairly heard and promptly disposed of would strengthen respect for the entire judicial system, and add dignity and effectiveness to the Common Pleas in relieving them of the protracted trials of trifling cases, and making them a court of error as well as of original jurisdiction.

That the practical objections would be many, we know. We can, however, hope that such changes will come as will make our system of the administration of justice free from reproach in every respect, a system worthy of the common-sense of the community, of the dignity of the law, and of the respect and co-operation of the profession.

Thomas Patterson.